IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9257 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VISHNU SHAMBHU RABARI

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on October 27, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Vishnu Shambhu

Rabari under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses in respect of incidents dated October 11 and 17, 1999. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Bhatt, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified by the detaining authority on October 27, 1999 and on that very day, the order detention was passed. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 As regards registered offences, Ms. Bhatt submitted further that all the offences relate to individual incidents and in no case, there was any disturbance to public order. She further submitted that the statement of witness-Vijaysinh is not supplied in respect of C.R. No.236 of 1999. She also submitted that the order is passed while the detenu was in judicial custody and no compelling reasons are shown for passing such an order. She has placed reliance on the decision in the case of Sanjeev Kumar Aggarwal v. Union of India & Ors., AIR 1990 SC 1202. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, registered offence No.1 took place in canteen of the hospital and although it appears to be individual incident, it may have the effect of public order. As regards statement of witness-Vijaysinh, he submitted that the case is pending investigation and, therefore, the statement may not be there and there is no question of supply of statement unless it is relied upon by the detaining authority. The petition may, therefore, be

dismissed.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been verified by the detaining authority on October 27, 1999 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Coming to the registered offences, it may be noted that a perusal of the F.I.R. and the relevant papers indicate that they all relate to individual incidents and there is nothing to indicate any disturbance to public order. As regards the contention raised by learned Assistant Government Pleader that the cases were pending investigation and statements of witnesses may not be there, it may be noted that the detaining authority has not filed any affidavit in reply. There is nothing to show that such statement was not there. On the contrary, the F.I.R. in respect of C.R. No.236 of 1999 indicates that Vijaysinh was cited as witness in the F.I.R. itself and necessary inference would that the statement of such a witness would be recorded by the Investigating Agency immediately. The incidents relate to March 30, 1999 and the order is passed on October 27, 1999, i.e. after a gap of about

six months and, therefore, unless contrary is indicated, a legitimate inference can be drawn that such statement was in existence. Apart from this, as stated above, the incidents relate to more or less law and order situation and not public order and, therefore, the satisfaction recorded by the detaining authority about the activity of the detenu being detrimental to public order cannot be considered as genuine. Further, the petitioner-detenu was in judicial custody when the order was passed. The grounds of detention do no indicate any compelling reason for passing the order of detention while detenu was in custody. Therefore, in light of the decision in the case of Sanjeev Kumar Aggarwal v. Union of India & Ors., AIR 1990 SC 1202, the order would stand vitiated.

7. In the result, the petition is allowed. The impugned order of detention dated October 27, 1999, passed against the detenu is hereby quashed. The detenu-Vishnu Shambhu Rabari is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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